

BEFORE THE
SHORELINES HEARINGS BOARD
STATE OF WASHINGTON

1 IN THE MATTER OF A SUBSTANTIAL)
2 DEVELOPMENT PERMIT ISSUED BY)
3 KLIKITAT COUNTY TO MORGAN)
4 RANCH INVESTMENT PARTNERSHIP)

5 STATE OF WASHINGTON,)
6 DEPARTMENT OF ECOLOGY, and)
7 SLADE GORTON, ATTORNEY GENERAL)

8 Appellants,)

9 vs.)

10 KLIKITAT COUNTY and MORGAN)
11 RANCH INVESTMENT PARTNERSHIP,)

12 Respondents.)

SHB No. 116

FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND ORDER

13 A hearing on the request for review to the issuance of a
14 conditional shoreline management substantial development permit was
15 held at Tacoma, Washington on March 29, 1974, before Board members
16 W. A. Gissberg (presiding), Ralph Beswick and Robert Beaty.

17 Appellants, Washington State Department of Ecology and Attorney
18 General, appeared through Thomas C. Evans, Assistant Attorney General;
respondent, Klickitat County, appeared by its planning director,
Dennis Olson; respondent, Morgan Ranch Investment Partnership, appeared

EXHIBIT A

1 by its general manager, Al Howe.

2 Having examined the transcript of the testimony and considered
3 the exhibits, and being fully advised, the Board makes and enters
4 these

5 FINDINGS OF FACT

6 I.

7 Morgan Ranch Investment Partnership (hereinafter called
8 respondent) is the owner of 79 acres of unimproved grazing land
9 (site) bisected by the Little Klickitat River in rural Klickitat County.
10 Desiring to plat and subdivide the site into 31 lots varying in
11 size from 25,000 square feet to 5 acres, respondent on June 4, 1974,
12 submitted its applications to Klickitat County for a shoreline
13 management substantial development permit and a preliminary plat
14 approval (plat) for a recreational subdivision.

15 II.

16 Lots 1 through 11 of the plat are situated on the north side
17 of the stream on relatively level ground in an area which is
18 predictably inundated with flash flood waters during a short time
19 in December or January of each year. Purchasers of lots 1 through 11
20 may use them only for campsites.. During the summer months the
21 stream becomes nearly dry. The remainder of the lots lay south of
22 the river. Access to them is proposed to be provided by a private
23 road to be constructed between the base of a rock bluff and the
24 river where contours are most favorable for road construction. The
25 elevation of the area south of the proposed road rises steeply up
26 to a grade of 65%. Adverse soil conditions preclude the use of

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1 septic tanks for the disposal of sewage waste. Individual sewage
2 disposal facilities would be permitted only upon approval of the
3 county sanitarian. Each lot purchaser would be required to procure
4 or develop his own potable water source. No provision is made for
5 electricity. No building could be lawfully constructed, nor a
6 building permit issued, until the county sanitarian approves a
7 sanitary waste system.

8 III.

9 Respondent proposes to form a non-profit corporation, the
10 members of which would be owners of lots, whose purpose and function
11 would be to construct and maintain private roads, operate a "sanitary
12 dumping station and trash collection" and pay for such through
13 assessments and levies against each lot owner. (APP. Ex. 10)

14 IV.

15 Respondent suggests many environmental controls that the
16 Homeowners Association could accomplish. None of those suggestions
17 however are binding upon the ultimate lot purchasers, but that
18 corporation could serve such a function.

19 V.

20 Hearings before the Planning Commission on July 16 and
21 September 17, 1973, resulted in revisions of the proposed plat and
22 a recommendation of conditional approval. (APP. Ex. 4) One
23 recommendation was that an environmental assessment be prepared.
24 The planning staff had recommended that a detailed environmental
25 impact statement (EIS) be prepared.

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1 VI.

2 On October 1, 1973, the County Commissioners conditionally
3 approved the preliminary plat and the shoreline management substantial
4 development permit. They did not adopt the Planning Commission's
5 recommended condition which stated:

6 ". . .7. That areas exposed by development
7 be seed (sic) to permanent adapted
8 cover and not left for prolonged
periods during critical erosion
months."

9 Because of the county commissioners concern for possible
10 significant environmental effects of the road construction between
11 the river and lot 12, they did impose as a condition that:

12 ". . .5. Environmental assessment statement
13 be prepared." (APP. Ex. 5)

14 VII.

15 An environmental assessment was furnished to the county by
16 respondent (APP. Ex. 8) on November 12, 1973, well after the
17 governmental actions of October 1, 1973 which approved the permit and
18 preliminary plat.

19 VIII.

20 . Excavation for and construction of the private road which provides
21 access from the existing public highway to the lots of the plat lying
22 south of the river will result in sidecast material rolling into the
23 river and will permanently scar the natural rocky bluff above the
24 river with a road cut.

25 Appellants' exhibit 3 indicates that there may be an alternate
26 route availability by traversing the south slope to the east of the

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1 proposed location and entering the development from the top of the
2 hill rather than along the river.

3 IX.

4 Although appellant presented evidence showing the maximum and
5 minimum flows of water in the Little Klickitat River, no evidence
6 was presented as to the mean annual flow thereof. This Board is
7 therefore unable to find whether the mean annual flow is above or
8 below twenty cubic feet per second. The shoreline is not one of
9 state-wide significance.

10 X.

11 No admissible evidence was offered by appellant showing the status
12 of the master program of Klickitat County.

13 XI.

14 Any Conclusion of Law hereinafer recited which should be deemed
15 a Finding of Fact is hereby adopted as such.

16 From which comes the following

17 CONCLUSIONS OF LAW

18 I.

19 No contention having been made to the contrary and respondent
20 having subjected itself to the provisions of the Shoreline Management
21 Act (SMA), this Board has jurisdiction of the parties and subject matter
22 of the request for review.

23 II.

24 The County did not follow the procedures of the State Environmental
25 Policy Act (SEPA). For that reason the permit must be vacated. When
26 the decision maker has identified some environmental impact, but has

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1 nevertheless concluded that a detailed EIS is not required,
2 the decision maker must furnish or procure an "assessment" statement
3 before taking final action on the project. The assessment statement
4 must contain convincing reasons why a project with "possible"
5 significant environmental impact does not require a detailed impact
6 statement. Klickitat County has not met its SEPA burden to supply
7 a more thorough analysis and rationale before the Board can concur
8 that an EIS is not required.

9 III.

10 The policy section of the SMA, RCW 90.58.020, provides:

11 ". . . This policy contemplates protecting
12 against adverse effects to the public
13 health, the land and its vegetation and
14 wildlife and the waters of the state
15 and their aquatic life . . . "

16 ". . . Permitted uses in the shoreline shall
17 be designed and conducted in a manner to
18 minimize, insofar as practical, any
19 resultant damage to the ecology and
20 environment of the shoreline area . . . "

21 Construction of the access road, as proposed, along the south side
22 of the river causes an adverse effect to the land and its vegetation
23 in the shoreline area. No rebuttal evidence was presented by
24 respondents which would demonstrate any effort to minimize the
25 adverse effect through selecting an alternate route or modifying
26 construction techniques or rehabilitation measures so as to minimize
27 sidecasting above the river and the visual impact of destruction of
28 vegetation and ordinary posture of the land as a result of sidecast
29 and road backslope.

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IV.

A substantial development permit shall be granted only when the proposed development is consistent with the policy of RCW 90.58.020 and the guidelines of the Department of Ecology. We find the permit to be inconsistent therewith, but do not preclude a future finding by Klickitat County and this Board that a permit could be consistent therewith.

V.

Any Finding of Fact which should be deemed a Conclusion of Law is hereby adopted as such.

From which the Shorelines Hearings Board issues this

ORDER

The substantial development permit is vacated, without prejudice.

DONE at Lacey, Washington, this 20th day of June, 1974.

SHORELINES HEARINGS BOARD

Walt Woodward
WALT WOODWARD, Chairman

W. A. Gissberg
W. A. GISSBERG, Member

Ralph A. Beswick
RALPH A. BESWICK, Member

Robert E. Beaty
ROBERT BEATY, Member

Mary Ellen McCaffree, Member

Robert F. Hintz, Member

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